ant, on her return from the place where it is alleged the operation was performed, and purporting to state what was done at such place, are inadmissible. State *v.* Wood, 53 N. H. 484; People *v.* Murphy, 101 N. Y. 126, 4 N. E. 326, 54 Am. Rep. 661; People *v.* Davis, 56 N. Y. 95; Maine *v.* People, 9 Hun (N. Y.) 113.

And since dying declarations are only admissible where death is the subject of the accusation and the circumstance of that death the subject matter of the declaration, and since death in and of itself is not a constituent element of the crime of abortion, therefore dying declarations are inadmissible against the defendant in a prosecution charging that crime. Railing *v.* Com., 110 Pa. St. 100, overruling Com. *v.* Bruce, 5 Crim. L. Mag. 680; Com. *v.* Homer, 153 Mass. 343; People *v.* Davis, 56 N. Y. 95; State *v.* Harper, 35 O. St. 78, 35 Am. Rep. 596; Reg. *v.* Hind, 8 Cox C. C. 300.

Dying declarations are admissible only when the death of the declarant is the subject of the charge, and the circumstances of the death are the subject of the dying declarations. Rex *v.* Mead, 2 B. &. C. 605; 1 Greenl. Ev., § 156; Rex *v.* Lloyd, 4 C. &. P. 233; Runyan *v.* Price, 15 Ohio St. 8; State *v.* Harper, 35 O. St. 78, 35 Am. Rep. 596, 597; Montgomery *v.* State, 80 Ind. 338, 41 Am. Rep. 815; Peoples *v.* Com., 87 Ky. 487, 9 S. W. 509; State *v.* Dickinson, 41 Wis. 299.

Hence, upon an indictment for feloniously using an instrument upon the person of a woman, who afterward died, with intent to procure an abortion and not an indictment for homicide, the dying declarations are inadmissible. Reg. *v.* Hind, 8 Cox C. C. 300; State *v.* Harper, 35 O. St. 78, 35 Am. Rep. 596, 597; State *v.* Barber, 28 O. St. 583; People *v.* Davis, 56 N. Y. 95.

But where the woman conspires with others to commit the offense on her own person and the conspiracy is shown, her declarations in furtherance of the common design, as, for example, statements respecting the object of her visit to the place where the offense was committed and what took place on that occasion, are evidence against others engaged with her in the criminal act. Solander *v.* People, 2 Colo. 48; State *v.* Howard, 32 Vt. 380.

Will—Construction—"Or" Read as "and"—Gift over in Case of Prior Taker Dying "Intestate or Childless, or under Twenty-One."—In re Crutchley, Kidson *v.* Marsden (1912), 2 Ch. 335. In this case the will of a testator was in question, whereby he gave to his niece F. A. Smith two freehold houses, for her own use and disposal, "subject only to the following conditions, namely, in the event of the said F. A. Smith dying intestate or childless, or under twenty-one (but not otherwise), the said two houses shall become the property of" Richard Marsden. F. A. Smith attained 21 and died a spinster, and intestate; and the point in controversy was whether or not the gift over took effect. Parker, J., decided that it did not;

because, in his opinion, the gift over in the event of the first absolute taker dying intestate or childless or under 21, must be read as if either the first or second "or" was "and," and so reading the devise the event had not happened, and, therefore, the gift over did not take effect. This rule of construction the learned judge remarks is based on a presumed intention on the part of the testator to benefit the children, if any, of the first taker, which would be defeated if he died under twenty-one, leaving children, and the word "or" were construed disjunctively.—Canada Law Journal for October.

Sunday Law Does Not Prohibit Baseball.—Defendant in Territory *v.* Davenport, 124 Pacific Reporter, 795, was charged with having violated the Sunday law by engaging in a game of baseball. The law prohibited persons from engaging in any sports, or in horse racing, cock fighting, etc., on Sundays. The Supreme Court of New Mexico holds that baseball, so long as it is conducted and carried on in a harmless and proper manner, free from rowdyism, gambling, and immorality, does not come within sports prohibited by the statute. The court says: "What could be more restful or helpful to the man who spends his week in an office or a close shop than to engage in an invigorating, clean, and wholesome exercise, such as baseball, on this day. Baseball is essential and natural in the nature of amuse ment, both for the participants and spectators, and is far removed from the ordinary meaning of the word 'labor.'"

Cruelty to Animals.—Does cruelty to turtles fall within the statute prohibiting cruelty to animals? The answer is found in People *v.* Downs, 136 New York Supplement, 440. Some time in March, 1911, sixty-five green turtles were shipped from Cuba on a steamship with their fins or flippers perforated and tied together on each side by means of rope passing through the perforation. Each of these turtles was placed on its back or shell on the deck of the steamer, in which position it was permitted to remain until the ship reached New York. The captain of the steamship was then prosecuted under the penal law of New York for cruelty to animals, the charge being that he had caused these turtles unnecessary and unjustifiable pain and suffering while in transit. The first inquiry is, Is a turtle an animal? The statute of New York defines an animal as not including the human race, but every other living creature. Notwithstanding that a turtle is a species of reptile, the court holds that a turtle is included in this definition. The next question taken up is, Was unjustifiable pain inflicted? The City Magistrate's Court comments: "Hogs have the nose perforated and a ring placed in it; ears of calves are similarly treated; chickens are crowded into freight cars; cod fish is taken out of the waters and thrown into barrels of ice and sold on the market as 'live cod'; eels have been known to squirm